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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 3143 of 2007

Date of decision: 30.8.2007

Balraj Singh **...Petitioner**

Versus

Pritam Singh and another **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Baljinder Singh, Advocate for the petitioner.

Mr. Vikas Bahl, Advocate for the respondents

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RAJESH BINDAL, J.

The challenge in the present petition is to an order dated May 17, 2007 passed by the Additional District Judge, Nawanshahr dismissing appeal filed by the petitioner for setting aside the order dated March 7, 2007 passed by Civil Judge (Senior Division), Nawanshahr vide which injunction application filed by the plaintiff-respondent was allowed.

The present proceedings arise out of a suit for specific performance filed by respondent-plaintiff against the petitioner-defendant alongwith an application under Order 39 Rule l and 2 read with Section 151 of the Code of Civil Procedure for interim direction. It is averred in the suit that petitioner had agreed to sell the property to the respondent-plaintiff for a consideration and received the earnest money of Rs. 10,50,000/-, while executing the agreement to sell. After executing the agreement, respondent-plaintiff was put in possession of the property. Infact there was an earlier litigation with regard to same property regarding possession between the parties. In a suit filed by the petitioner, for injunction against the respondent, raising the plea that after the execution of the agreement to sell, respondent was trying to dispossess the petitioner from the land in dispute went upto Hon’ble the Supreme Court, wherein it has been specifically

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recorded that the possession of the property in dispute was handed over by the petitioner to respondent. The order passed in the earlier proceedings between the parties by this Court is as under:-

> "I have considered the contention of the petition and find no force in the same. It is not in dispute that the petitioner has admitted that the agreement was executed between the parties, which does have a recital of possession having been handed over to the respondents. Even if the said agreement to sell is not registered it would not debar the respondent from protection U/s 53-A of Transfer of Property Act (for short the Act). However, in view of the provision U/s 49 of the Registration Act the same can be used as evidence of possession, once the document is not in dispute. It is not open to the petitioner to say that actual physical possession was not given and only symbolic possession was given." (Sic).

The above referred order passed by this Court, was ultimately upheld by the Hon'ble the Supreme Court. So, the subject matter in both the litigations and also the question of possession and the circumstances leading to the delivery of possession are identical. Once in an earlier proceedings, it has been found upto Hon'ble the Supreme Court that possession of the property in question was handed over by the petitioner to respondent no.1, nothing lies in the mouth of the petitioner now to allege again that the findings recorded earlier should not be relied upon to accept the prayer made by the respondent in subsequent suit to hold that his possession be not disturbed during the pendency of the suit. Learned counsel for the petitioner has relied upon the judgments in **Rajesh Kumar Vs. Jagdish Parshad and others 2006 (3) Punjab Law Reporter 213 and Mangli Ram Vs. Punjab Wakf Board, Ambala and others 1999 (1) PLJ 585.**

In my opinion, reference to authorities in the present set of circumstances would not be relevant. Once in an earlier dispute between the parties themselves, arising out of the interpretation of the same very

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agreement, it has been found upto Hon'ble the Supreme court that possession of the land was delivered by the petitioner to respondent no.1, there is no occasion for this court to take a view different than what was taken earlier.

Accordingly, I do not find any merit in the present petition and the same is dismissed.

August 30, 2007 **(Rajesh Bindal)**
Pka **Judge**